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GOVERNOR OF HAWAII



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for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 16, 2011
Honolulu, Oahu

Aulani Disney Resort and Spa
APPLICATION FOR A WATER USE PERMIT
Disney Well 1 (Well No. 2007-04), TMK 9-1-057:037, WUP No. 905
Future (Marine Habitat) Use for 0.072 mgd
Makaiwa Ground Water Management Area, Oahu

APPLICANT:

Aulani Disney Resort and Spa
92-1185 Aliinui Drive
Kapolei, HI 96707

LANDOWNER:

Same

SUMMARY OF REQUEST:

The applicant is requesting approval of a water use permit for an allocation of 0.072 million gallons per day (mgd) of brackish/salt water from a new well to supply a saltwater marine habitat.

LOCATION MAP: See Exhibit 1

BACKGROUND:

On December 8, 2010, Aulani Disney Resort and Spa submitted a completed water use permit application to the Commission on Water Resource Management (Commission). Additional information regarding the source, use, notification, objections, and field investigation is provided in Attachment A.

ANALYSIS/ISSUES:

Section 174C-49(a) of the State Water Code establishes seven (7) criteria that must be met to obtain a water use permit. An analysis of the proposed permit in relation to these criteria follows:

(1) Water availability

On March 3, 1993, the Commission executed various boundary reclassifications, which included the Makaiwa Aquifer System Area. The submittal to the Commission stated that:

The Makaiwa Aquifer System has significant ground water level differences which indicate that this area reacts differently from the Waianae Aquifer System. No sustainable yield has been established in this area.

Additionally, regarding the Makaiwa Aquifer System Area, Table 3-11 of the Commission's Water Resource Protection Plan states that:

(1) Sustainable Yield has not been calculated due to a lack of recharge data for this aquifer system area. (2) Predominantly Basal Ground Water. (3) Ground Water is Brackish.

Finally, the applicant is requesting for the well to be classified as a saltwater well. The Commission considers saltwater to be defined as 17,000 mg/l. The applicant states that water samples indicate that chlorides are in the range of 16,500 mg/l +/- 200 mg/l, which the applicant believes is close enough to the Commission's definition to classify it as a saltwater well.

Typically, the Commission will issue water use permits for saltwater wells, but will not deduct the allocation from the sustainable yield.

There are currently no other users, and no other pending applications within the Makaiwa Aquifer System Area.

Staff's opinion is that because the preliminary chloride concentration of 16,500 mg/l is close to the Commission's 17,000 mg/l definition of saltwater, the aquifer is identified as primarily brackish, and the well is close to the ocean (i.e. farthest downgradient in the aquifer and will therefore have minimal impact on other users, of which there are currently none), water will be available to accommodate the requested amount.

(2) Reasonable-beneficial

Section 174C-3 HRS defines "reasonable-beneficial use" is

"...the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest".

I. Purpose of Use

The applicant is requesting the use of brackish / salt water for a saltwater marine habitat. This is considered a commercial use of water. The Declaration of Policy section, §174C-2(c) HRS, states that the Water Code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for various purposes including commercial uses.

II. Quantity Justification

The applicant is requesting a total of 0.072 mgd for the saltwater marine habitat. There will be two ponds on the property, one larger 176,430 gallon pond and a smaller 16,600 gallon pond. The water will be filtered twice per day, and 36,000 gallons will be disposed of through an injection well at each filtration. This amounts to approximately 18% of the total capacity of the two ponds being disposed of with every filtration.

The applicant states that the pond will have approximately ½" of evaporative losses, which amounts to 1,150 gallons per day. These evaporative losses for the pond will be compensated with fresh potable water, which will be supplied by the municipal water supply to the resort and are therefore not a part of this allocation request.

III. Efficiency of Use

The applicant states that its operations are as water efficient as possible because the ponds will be lined to minimize seepage. However, evaporation and filtration losses are inevitable.

IV. Analysis of Practical Alternatives

The applicant has identified **no** alternatives to the proposed use of brackish / salt water. An analysis of each of the alternatives is as follows:

1. Municipal sources: Potable water source using sea salt additives would not be either feasible nor reasonable.
2. Wastewater reuse: R1 effluent is not available at the resort, nor would it be appropriate for marine habitat use.
3. Ditch system: None available.
4. Desalinization: Not applicable.
5. Surface water: Not available.

(3) Interference with other existing legal uses

There are no other wells currently in use within 1 mile of the Disney well. Well No. 2007-01 is an abandoned and sealed well. Wells 2006-16 and 2107-07 are observation wells.

(4) Public interest

Public interest is defined under §174C-2 - Declaration of policy, as follows:

“(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.”

The well is to be used for marine habitat, which may be classified as commercial (hotel resort) use. Therefore this use is in the public interest.

(5) State & county general plans and land use designations

The proposed uses are in the State **Urban** District, and the county zoning is **P-2**. The proposed use is consistent with these land use designations.

Normal agency review includes:

- 1) the State's Department of Land and Natural Resources (DLNR) and its State Parks, Aquatic Resources, Historic Preservation, and Land Divisions; the Department of Health (DOH) with its Clean Water, Safe Drinking Water, and Wastewater Branches; the Department of Hawaiian Home Lands (DHHL), and Land Use Commission (LUC); and the Office of Hawaiian Affairs (OHA).
- 2) the Office of the Mayor, Department of Planning and Permitting, and the Board of Water Supply;

No comments or objections have been made through this review. These proposed uses are consistent with the state and county general plans and land use designations.

(6) County land use plans and policies

Again normal County review includes the Office of the Mayor, Department of Planning and Permitting, and the Board of Water Supply. No comments or objections have been made.

(7) Interference with Hawaiian home lands rights

All permits are subject to the prior rights of Hawaiian home lands. The Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs have reviewed this application and made no comments or objections. Further, standard water use permit conditions 3.g., 6., and 9.f. notify all water use permittees that their permits are subject to and cannot interfere with Hawaiian home land rights.

(8) Other issues

I. Chapter 343 – Environmental Assessment (EA) Compliance

EA Triggers

The applicant's proposed action does not trigger the need for an EA under §HRS 343-5(a).

RECOMMENDATION:

Staff recommends that the Commission approve the issuance of water use permit no. 905 to Aulani Disney Resort and Spa for the reasonable and beneficial use of 0.072 million gallons per day of Brackish/Salt water for Marine Habitat use from the Disney Well 1 (Well No. 2007-04), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
3. Standard Condition 16 for a water shortage plan requirement is waived.

Respectfully submitted,



WILLIAM M. TAM
Deputy Director

Attachment(s): A (Water Use Permit Detailed Information)
 B (Water Use Permit Standard Conditions)

Exhibit(s): 1 (Location Map)

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Interim Chairperson

WATER USE PERMIT DETAILED INFORMATION**Source Information****AQUIFER:**

Makaiwa System, Pearl Harbor Sector, Oahu

Sustainable Yield:

n/a mgd

Existing Water Use Permits:

0 mgd

Total other pending applications:

0 mgd

This application:

0.072 mgd

WELL:

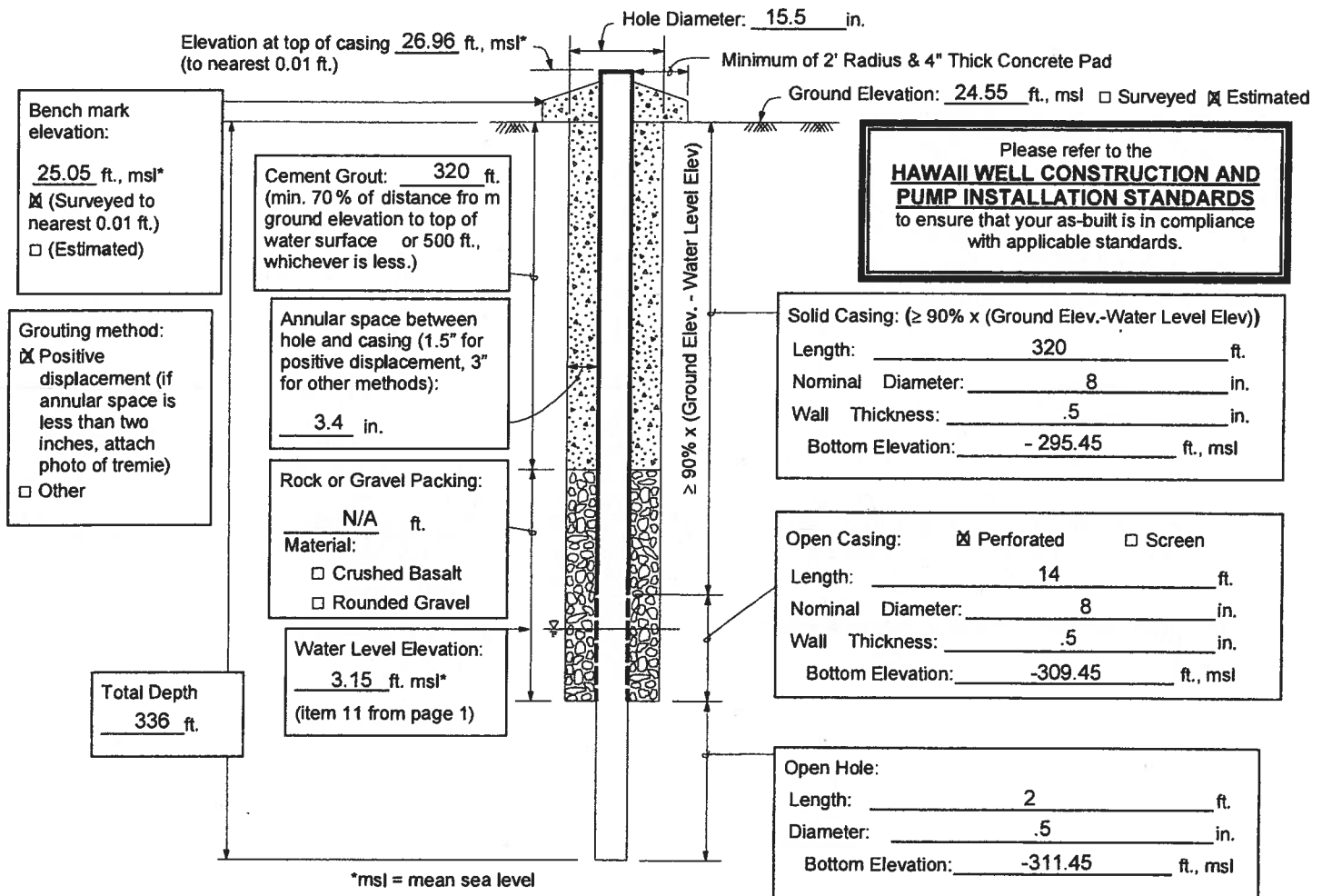
Disney Well 1 (Well No. 2007-04)

Location:

92-1185 Aliinui Drive, Oahu, TMK: 9-1-057:037

Year Drilled:

2010



Staff Submittal

February 16, 2011

Use Information

Quantity Requested:

0.072 gallons per day.

Future Type of Water Use:

Marine Habitat

Place of Water Use:

TMK: 9-1-057:005,034,035,036,037

Nearby Surrounding Wells

There are 3 other wells within a mile of the well (see Exhibit 1). None of these wells are currently in use.

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Honolulu Advertiser on December 22, 2010 and December 22, 2010 and a copy of the notice was sent to the Office of the Mayor. Copies of the completed application were sent to the Department/Board of Water Supply, Department of Planning and Permitting, Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, the various divisions within the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted to the Commission by January 13, 2011.

Objections

The public notice specifies that an objector meet the following requirements: (1) state property or other interest in the matter; (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; (3) state all grounds for objections to the proposed permits, (4) provide a copy of the objection letter(s) to the applicant, and (5) submit objections meeting the previous requirements to the Commission by January 13, 2011.

To the best of staff's knowledge there are no objectors who have property interest within the Makaiwa Aquifer System or who will be directly and immediately affected by the proposed water use.

Briefs in Support

Responses to objections, or briefs in support, regarding the application are required to be filed with the Commission ten (10) days after an objection is filed and, presumably, copies are served to the applicant. No briefs in support were filed with the Commission.

Field Investigation

No field investigation has been conducted for this application.

STANDARD WATER USE PERMIT CONDITIONS

1. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial uses means "the use of water in such a quantity as is necessary for economic and efficient utilization which is both reasonable and consistent with State and County land use plans and the public interest." (HRS § 174C-3)
2. The right to use ground water is a shared use right.
3. The water use must at all times meet the requirements set forth in HRS § 174C-49(a), which means that it:
 - a. Can be accommodated with the available water source;
 - b. Is a reasonable-beneficial use as defined in HRS § 174C-3;
 - c. Will not interfere with any existing legal use of water;
 - d. Is consistent with the public interest;
 - e. Is consistent with State and County general plans and land use designations;
 - f. Is consistent with County land use plans and policies; and
 - g. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act and HRS § 174C-101(a).
4. The ground water use here must not interfere with surface or other ground water rights or reservations.
5. The ground water use here must not interfere with interim or permanent instream flow standards. If it does, then:
 - a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;
 - b. The interim or permanent instream flow standard, as applicable, must be amended.
6. The water use authorized here is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.
7. The water use permit application and submittal, as amended, approved by the Commission at its February 16, 2011 meeting are incorporated into this permit by reference.
8. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission.
9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
 - a. protect the water sources (quantity or quality);
 - b. meet other legal obligations including other correlative rights;
 - c. insure adequate conservation measures;

- d. require efficiency of water uses;
- e. reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
- f. meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
- g. carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.

- 10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis (attached).
- 11. This permit shall be subject to the Commission's periodic review of the **Makaiwa** Aquifer System's sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the **Makaiwa** Aquifer System, or relevant modified aquifer(s), is reduced.
- 12. A permit may be transferred, in whole or in part, from the permittee to another, if:
 - a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
 - b. The Commission is informed of the transfer within ninety days.

Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer which involves a change in any condition of the permit, including a change in use covered in HRS § 174C-57, is also invalid and constitutes a ground for revocation.

- 13. The use(s) authorized by law and by this permit do not constitute ownership rights.
- 14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances which will affect the permittee's water use.
- 15. The permittee understands that under HRS § 174C-58(4), that partial or total nonuse, for reasons other than conservation, of the water allowed by this permit for a period of four (4) continuous years or more may result in a permanent revocation as to the amount of water not in use. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section HRS § 174C-62 shall not apply towards the four-year period of forfeiture.

16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee's water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the **Makaiwa** Ground Water Management Area.
17. The water use permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.
18. Special conditions in the attached cover transmittal letter are incorporated herein by reference.
19. The permittee understands that any willful violation of any of the above conditions or any provisions of HRS § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.

